

REMARKS/ARGUMENTS

The Office has identified the following groups and is requiring restriction to one of the same:

- Group I: Claims 1-4, and 10, drawn to a mutant *Bacillus* bacterium comprising, on the genome or plasmid thereof, DNA having a promoter sequence recognized and transcribed specifically during the sporulation stage, and a sigA gene or a gene equivalent thereto, the promoter sequence being ligated to an upstream end of the sigA gene or a gene equivalent thereto; and a method of constructing said mutant bacterium;
- Group II: Claims 5-9, drawn to a method for producing a protein or a polypeptide by use of the recombinant microorganism as described in claim 4, wherein the protein has an amino acid sequence represented by SEQ ID NO: 4;
- Group III: Claims 5-9, drawn to a method for producing a protein or a polypeptide by use of the recombinant microorganism as described in claim 4, wherein the protein has an amino acid sequence represented by SEQ ID NO: 19; and
- Group IV: Claims 5-9, drawn to a method for producing a protein or a polypeptide by use of the recombinant microorganism as described in claim 4, wherein the protein has an amino acid sequence represented by SEQ ID NO: 21.

Applicants elect, with traverse, Group I, Claims 1-4 & 10, for examination.

Restriction is only proper if the claims of the restricted groups are independent or patentably distinct and there would be a serious burden placed on the Office if restriction is not required (MPEP §803). The burden is on the Office to provide reasons and/or examples to support any conclusion in regard to patentable distinction (MPEP §803). Moreover, when citing lack of unity of invention in a national stage application, the Office has the burden of explaining why each group lacks unity with the others (MPEP § 1893.03(d)), i.e. why a single general inventive concept is nonexistent. The lack of a single inventive concept must be specifically described.

The Office alleges that Groups I and II do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons:

Haldenwang WG (THE SIGMA FACTORS OF BACILLUS SUBTILIS, MICROBIOLOGICAL REVIEWS, AMERICAN SOCIETY FOR MICROBIOLOGY, WASHINGTON, DC US, vol. 59, no. 1, 1 March 1995 (1995-03-01), pages 1-30, see IDS) teaches a mutant *Bacillus Subtilis* bacterium comprising, on the genome or plasmid thereof, DNA having a promoter sequence recognized and transcribed specifically during the sporulation stage, and a sigA gene, the promoter sequence being ligated to an upstream end of the sigA gene (see page 5, right column, paragraph 1), which anticipates the limitation of claim 1, and thus, the shared technical feature of the groups is not a “special technical feature”, unity of invention between the groups does not exist. It is also noted that a shared technical feature between groups II-IV does not exist because SEQ ID NOs: 4, 19 and 21 represent structurally and functionally distinct proteins, i.e., cellulose, amylase, and protease, respectively.

See page 3 of the Restriction Requirement mailed October 13, 2009.

Annex B of the Administrative Instructions under the PCT, paragraph b (Technical Relationship), states, emphasis added:

The expression “special technical feature” is defined in Rule 13.2 as meaning those technical features that defines a contribution which each of the inventions, ***considered as a whole***, makes over the prior art. The determination is made on the contents of the claims as ***interpreted in light of the description*** and drawings (if any).

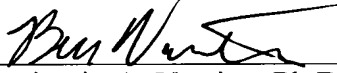
Applicants respectfully submit that the Office did not consider the contribution of each invention, ***as a whole***, in alleging the lack of a special technical feature over the cited reference. Applicants also respectfully submit that the Office has not provided any indication that the contents of the claims ***interpreted in light of the description*** were considered in making this allegation. Therefore, the Office has not met the burden necessary to support the assertion of a lack of unity of the invention.

Accordingly, the requirement for restriction is no longer tenable and should be withdrawn.

Applicants respectfully submit that the above-identified application is now in condition for examination on the merits, and early notice thereof is earnestly solicited.

Respectfully Submitted,

OBLON, SPIVAK, McCLELLAND,
MAIER & NEUSTADT, L.L.P.



Benjamin A. Vastine, Ph.D.
Registration No. 64,422

Customer Number

22850

Tel. (703) 413-3000
Fax. (703) 413-2220
(OSMMN 07/09)